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No. 81-2264

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1981

EDWARD LONEY,

Petitioner

v.

UNITED STATES OF AMERICA,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITIONER'S REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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ARGUMENT

Petitioner's Fourth Amendment rights were violated when federal agents conducted a warrantless search of his wallet several hours after it had been seized from him incident to arrest and reduced to the agents' exclusive control.

Respondent argues in its Brief, at Page 6, that the search of LONEY'S wallet was justified pursuant to several decisions of the Courts of Appeal. However, none of these decisions, even if followed by this Court, is dispositive of the issue here. For example, in *United States v. Passaro*, 624 F.2d 938 (CA 9 1980), cert. denied, 449 U.S. 877 (1981) the Ninth Circuit relied upon the Supreme Court's decision in *United States v. Edwards*, 415 U.S. 800 (1974), in concluding that a defendant's wallet may be *seized* from him at the place of detention, and its contents searched. In so doing, the Court noted:

> "In EDWARDS, the defendant was arrested for the attempted break-in. After investigation of the scene revealed that a pry bar had been used on a window sill, the authorities decided to examine the defendant's clothing. The Court held that the warrantless search and seizure of the clothing did not violate the Fourth Amendment, and that once the accused is lawfully arrested and is in custody, the effects in his possession at the place of detention that were subject to search at the time and place of his arrest may lawfully be searched without a warrant . . ." *United States v. Passaro*, supra, at page 943-944.

Thus, both *Edwards* and *Passaro*, as well as all of the other cases cited at Page 6 of Respondent's Brief, involved searches of items still in the defendant's possession at the place of detention, while here, the item searched, LONEY'S wallet, had been seized and reduced to the exclusive possession of federal agents hours earlier, at the time and place of his arrest.

This distinction acquires added significance when considered in light of the decision in *United States v. Monclavo-Cruz*, 662 F.2d 1285 (CA 9 1981). In that case, the Ninth Circuit held that the Warrant Clause was violated when authorities seized the defendant's purse at the time of her arrest, but delayed the search thereof until arriving at the initial place of detention. In distinguishing *Passaro*, the Court placed much reliance upon the fact that "the *Passaro* court characterized the wallet of the arrested person as an 'element of his clothing.' *Passaro*, supra at 944." *United States v. Monclavo-Cruz*, supra, at page 3363. No such characterization could be made of LONEY'S wallet when it was securely in federal agents' possession at the time of search thereof. See *United States v. Fleming*, 677 F.2d 602 (CA 7 1982).

Respondent also suggests that the stationhouse search of LONEY'S wallet was proper because the arresting agent had previously examined the contents of the wallet shortly after LONEY'S arrest. However, that testimony was not introduced at the suppression hearing, and was not before the district court at the time of denial of LONEY'S motion to suppress.

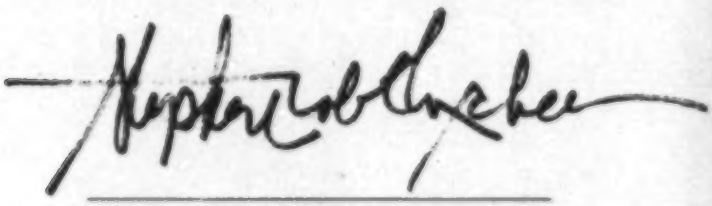
Respondent further argues, even if the search of the wallet was unlawful, the admission of evidence concerning its contents, formulae for chemicals used in the manufacture of methamphetamine, was harmless error. It ill behooves Respondent to make such an argument at this juncture in view of Respondent's comment on this evidence twice during closing argument (January 2, 1981 Tr. 5, 23), its assertion at Page 11 of the appellate brief that evidence of the formulae "make(s) it more likely that LONEY distributed methamphetamine than in the absence of such evidence", and its concession at oral argument before the Court of Appeals that admission of the chemical formulae did not constitute harmless error.

Accordingly, the search of LONEY'S wallet violated his Fourth Amendment rights, and the fruits of such illegal search should not have been admitted into evidence.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that a Writ of Certiorari should issue to review the Judgment of the United States Court of Appeals for the Third Circuit, which affirmed without discussion a Judgment of the United States District Court for the Eastern District of Pennsylvania.

Respectfully Submitted,



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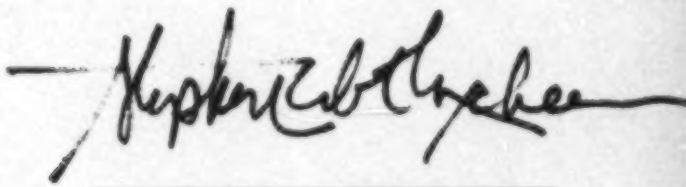
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of Petitioner's Reply to Brief in Opposition to Petition for Certiorari to the United States Court of Appeals for the Third Circuit and Appendix thereto were served upon the Solicitor General, Department of Justice, Washington, D.C. 20530, by depositing same in the mail, first class postage prepaid, on this date.



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September 1, 1982